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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC35-105
VAC Chapter title(s)	Rules and Regulations For Licensing Providers by the Department of Behavioral Health and Developmental Services
Date this document prepared	02/15/22 Revised with Additional Response to Comment <u>03/10/22</u>

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

DBHDS – Department of Behavioral Health and Developmental Services

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Section 37.2- 203 of the Code of Virginia gives the State Board of Behavioral Health and Developmental Services the authority to adopt regulations that may be necessary to carry out the provisions of Title 37.2 of the Code and other laws of the Commonwealth administered by the DBHDS commissioner. This

regulation is necessary to carry out the licensure requirements of Title 37.2 of the Code of Virginia, particularly Chapter 4.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

As long as the Code of Virginia requires DBHDS to license services (Title 37.2), there is no alternative to these regulations.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Six comments were received, five from one person who also commented on the planned '[overhaul](#)' action. DBHDS will respond to those comments in the response to comments to the draft overhaul chapters.

Commenter	Comment	Agency response
Anonymous 11/15/21 12:41 pm	<p>Discharge criteria need more flexibility [Excerpts] My comment may pertain to several sections of this regulation or others, perhaps mostly to 12VAC35-105-580 Service description requirements and 12VAC35-105-940 Criteria for involuntary termination from treatment.</p> <p>I believe that current regulations contributed, either intentionally or unintentionally, to the counterproductive and punitive discharge of my loved one from a respected outpatient treatment program in which he had made progress. The discharge resulted in a tailspin and subsequent hospitalizations for detox that might have been avoided had he been allowed to continue the outpatient treatment.....Briefly, after five months of sobriety this year and gradually reduced outpatient treatment plans, my loved one had a relapse and unsuccessful suicide attempt that resulted in an emergency room visit and overnight hospitalization. Unfortunately, this resulted in his discharge from the outpatient treatment....</p>	<p>Thank you for expressing your concerns. We appreciate your feedback.</p> <p>The Licensing Regulations do not include specific criteria for discharge, as discharge criteria should be both provider and individual specific. Instead, the regulations require that each provider have written policies and procedures regarding the discharge or termination of individuals from the service. In addition, the content of the individual's discharge plan and the determination to discharge the individual shall be consistent with the individual's ISP and the criteria for discharge. Including more specific language within the regulation regarding discharge requirements would prohibit providers from making decisions based on an individual's specific needs, which would not be clinically appropriate. Also, the regulations should not require a provider to continue to provide services for an individual with treatment challenges that can only be adequately</p>

	<p>I appreciate that there need to be protocols to guide professionals' treatment plans, but providers' recommendations have to be feasible, affordable and something a patient will willingly do. I believe VDBHDS regulations should clarify that providers have the flexibility to allow patients to continue outpatient treatment under circumstances similar to what I described, e.g., with one relapse after five months.</p>	<p>addressed in a different type of treatment.</p>
<p>John Humphreys 11/26/21 11:55 am</p>	<p>12 VAC 105 – 530 – monthly fire drills – Earlier comments on the dangers associated with this provision have gone unheeded and unaddressed – the state response was to point at other code provisions/practices for other types of long-term care facilities and include HCBS settings in with them for the purposes of making the regulatory requirement on HCBS settings. This is consistent with a long-established state practice of including HCBS settings whenever there is a restriction/penalty associated with these other provisions; but never including HCBS settings when there are benefits to being included with these settings (most recently the extra \$20 per person per day during the Covid epidemic) – if you're not going to include us when there's benefits to be had, then don't include us when there's restriction/penalties to be doled out – it's just not fair. The necessity of this provision for the safety of the individual served is also very dubious, I am not aware of and a literature search did not uncover any recent examples of individuals served in HCBS settings in Virginia being killed or injured in a fire due to inadequate evacuation. In fact, these required drills in our homes (and I'm betting a large majority of other homes) have consistently verified that both the individuals served and the staff have sufficient training and competency to accomplish the evacuation in under the prescribed time, unfailingly, consistently over and over again and that in the event of a fire evacuation would not be a risk; this was also true for years when only quarterly drills were conducted. In fact, the impact of a return of monthly drills has been increased</p>	

	<p>resistance to the disruption in the life of the individual served and in some cases reluctance (which will eventually become refusal) to respond as they complain about it only being another drill; which could create resistance that would be problematic in the event of a real fire.</p> <p>RECOMMENDATIONS: 1) adopt a quarterly requirement, that requires more frequent (monthly) performance if any drill performance falls outside of the prescribed standards for evacuation; 2) adopt a requirement that allows an individual provider to move to quarterly drills if 6 months of monthly drills demonstrated ongoing skills/competency necessary for a timely evacuation; or 3) adopt a quarterly requirement for sponsored/small group homes to replace the monthly requirement any option would be less restrictive/disruptive for the Individuals served in the home.</p>	<p>Thank you for your comments. DBHDS intends to propose an amendment to eliminate monthly drills, and to require providers to develop both an emergency preparedness plan and to include training on that plan at orientation and annually. The plan is expected to ensure safety of individuals receiving services and staff.</p>
<p>“ “ “ “ 11/26/21 11:56 am</p>	<p>12 VAC 35 – 105 – 170 and 12 VAC 35 – 106 – 120 – corrective action plans provide a required timeframe for the provider's CAP response to the issuance of a violation, but it provides no equivalent nor any required timeframe for the departments/licensing agents response to the CAP – whats good for the goose is good for the gander and simple fairness, efficiency and health/safety concerns dictates that the state should be required to respond in a timely manner.</p> <p>RECOMMENDATION: include a 10 – 15 day response time frame for the department/licensing agent to a provider submitted CAP</p>	<p>Thank you for your comments. The Guidance on Corrective Action Plans effective August 22, 2020, states the Office of Licensing will respond to CAPs within 15 business days of receipt of the provider’s CAP.</p>
	<p>12 VAC 35 – 105 – 1210 – 5; 12 VAC 35 – 107 – 100 and 12 VAC 35 – 107 – 830 – collectively place a burden on group homes and/or sponsors to include a daily log and once per shift log of progress notes to be completed on the date of service delivery. While this requirement</p>	

	<p>is reasonable and the typical practice in most homes, we recommend one exemption to this requirement when the individual served is engaged in supported extended travel away from the home on vacation or weekend getaways. We have traditionally taken people on a weeklong vacation at least annually and several weekend trips to various venues/events they have expressed an interest in, where the individual stay in motels, order from restaurants, sightsee, attend shows and shop for souvenirs. During these travels the individual is supported with a staff ratio of either 1:1 or 1:2 and the same staff person is primarily responsible for the them, their services and documentation throughout a long and typically arduous day. Currently, health related information is documented on a daily basis but the vast majority of the community integration supports, which are very repetitive across days, activity and venue types are recorded for several days at a time, with individual notations for days where significant differences were noted. This approach allows staff to make a very short notation, usually very late in the day (1030 – 11 PM), before they get up to start the process again very early in the morning (6 – 7 AM) to facilitate positive service provision. This approach typically leads to a more detailed note that compares/contrasts responses, changes and growth in abilities in the same support area across several days which makes the information more informative and better suited to informing development of the individual's supports. RECOMMENDATION: creating exemption when the individual engages and supported travel outside the home for several days in a row to allow for summary notes that address supports that are not health related</p> <p>[Summary statement at end] Although I can see the argument that each one of these items individually may not be all that significant, they are not being adopted individually, they are not being considered in the current calculations for the rate rebase and they slowly, incrementally, unnecessarily and</p>	<p>Thank you for your comment. DBHDS will consider this request.</p>
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	<p>inevitably add to the administrative burden/cost of the unfunded mandates that have already become the straw that broke the back of many providers who have had to recently close locations – this just makes it worse and worse. While many of these closures have been blamed on staff availability due to the low reimbursement rates and that is surely a significant factor, the exponentially increased administrative burden of the new regulations have also been a significant factor as they take money away from what could go to pay increases, take time away from supervisory supports to develop and retain good staff, reduce the availability of supervisory staff for service provision and foster high turnover rates in supervisory staff. When I first began operating group homes the entire administrative burden took approximately 25 – 30% time and the rest was spent on direct provision service, now the administrative burden takes 80 – 90% of my time, even though we now serve less people, which leaves very little time for service provision and staff retention supports and really makes the job frustrating, unrewarding and negative which is also contributing to closures</p>	
<p>“ “ “ “ 11/26/21 11:58 am</p>	<p>12 VAC 35 – 105 – 440 requires that all DSPs receive a full regimen of orientation trainings within 15 days of hire and the proposed 12 VAC 35 – 106 – 290 – B1 – further restricts the training period to only 14 days. While this is often more than sufficient time for individuals who accept a full-time position and have no other job, this provision occasionally creates barriers to hiring part-time individuals and to starting the training for full-time hires while they work out their notice at their previous job. For example, we have had to decline part-time hires (who would have been very good at the job) because their existing full-time position, family and other responsibilities only made them available for training on the weekends or for a reduced number of hours on a reduced number of days during the week, that would not have permitted them to complete the initial training within the 2 week timeframe required by the regulations; the same</p>	

	<p>factors prevent a jumpstart on training efforts for individuals while they work out their notice at the job they're leaving, creating unnecessary delays in their availability once their notice at their old job is complete. Hiring is extremely difficult and the available pool of applicants are very weak, artificial provisions that serve no realistic function, provide no additional benefit to individual protections/services and deter the hiring of individuals because they have other things going on in her life need to be corrected to address this growing concern. RECOMMENDATIONS: 1) remove the strict time requirement and replace it with a provision that does not permit new hires from being a part of the staffing plan, having independent contact with individuals served and/or providing any supports until they have completed the full introductory training regimen; 2) exempt small businesses and/or part-time/working out notice hires from the provision.</p>	<p>Thank you for your comment. Comments related to chapter 106 will be taken into consideration as feedback for the overhaul action as this is a new chapter pertaining to the licensing overhaul. DBHDS notes that the 15 day requirement for orientation is intended to protect the health and safety of individuals served</p>
<p>“ “ “ “ 11/26/21 12:00 pm</p>	<p>12 VAC 35 – 105 – 590 – C7; 12 VAC 35 – 107 – 160-C7 and 12 VAC 35 – 108 – 120-C7 – All include the phrase "experience may be substituted for the educational requirement"-this phrase and its prior equivalents have been an extremely problematic inclusion in the regulations for many years, which has been addressed in repeated comments by this writer and more recently expressed as a concern by other regulatory commenters; however, the regulatory inclusions listed above represent the 1st substantive change in this regulatory concern that I am aware of after all these years. Unfortunately, the change is insufficient, counterproductive and creates new unintended concerns: 1st – the change fails to address any of the concerns, possible benefits and negative impacts of this inclusion which have been addressed repeatedly and are reposted below. 2nd – the primary difference of the recent change is removal of the QDD/IDP title association within the section, which is counterproductive both for the regulations protects for individuals served and in addressing the concerns previously noted. By removing the</p>	

	<p>association of the QDDP title from this section of the regulation it divorces the educational substitute from the knowledge, skills and abilities that are essential for providing DD/ID services/supervision, and would presumably allow more generalized experience which neither serves the intent of the regulation nor the health, safety and welfare of the individual served. This is also counterproductive for individuals who wish to employ the educational substitute for their career advancement as in addition to the concerns noted below, it reduces their ability to provide a recognizable, accepted and germane addition to the alphabet soup post sign off on any official documentation, which the regulators appear to value so highly. 3rd – the recent change, perhaps inadvertently (perhaps not), would exclude a registered nurse who is in good standing with the Commonwealth but used one of several other avenues (besides a bachelor’s degree) to obtain their registered nursing certificate from automatic qualification. Given the dedication to care, knowledge, skills and abilities necessary for obtaining a registered nursing qualification, whether they have a bachelor’s degree are not these individuals should surely not be excluded as they currently are due to the change.</p> <p>Significant additional consideration needs to be given to greatly improving the implementation of this phrase in the regulations not only to prevent grave injustices, but also, to improve individual services and alleviate our severe and growing staffing concerns; given the insufficient reimbursement rates as outlined in this reposting:</p> <p>“Experience may be substituted for the educational requirement.” This sentence adds an entire class of individuals to the regulations without providing any clarity whatsoever as to their title, roles, rights and privileges. The guidance document for determining functional equivalency provided some standards but is wholly inadequate by itself for the effective</p>	
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	<p>identification, verification and use of this class of individuals – functional equivalents. Overreliance, on this single sentence in the regulations has had a negative impact on utilization of this class of individuals.</p> <p>1. Devalues an entire class of individuals who have demonstrated exemplary professional performance in serving this role. The current regulation permits the existence of functionally equivalent individuals without any direct recognition (title) or inclusion in the regulatory rights/privileges implied for QDDP's (holding a license, independently operating a home, training/supervision at upper levels etc.). Individuals in this class, who have clearly met the standard and are performing the function well, are reminded daily when they sign off on paperwork and are unable to know what letters to include after their name to meet the requirement/current vogue for establishing their bona fides on each document. These individuals also find themselves in a regulatory limbo as to what duties they can legitimately perform, as the areas required in the guidance document for establishing functional equivalency appear far broader than the regulatory inclusion (or maybe not, really no way to know). This regulatory limbo is destructive to the morale of individuals who fulfill this function, excessively limits their career advancement opportunities and represents a basic unfairness to the individual who is dedicated a lifetime of work to serving individuals in the population.</p> <p>2. Disincentivizes the development and utilization of functional equivalents. The current regulation permits the existence of functional equivalent individuals but provides no verification process that would formalize the acceptability of and Individual in that role. Licensing agents will not review the material that establishes equivalency and/or provide written verification that an individual has been determined to meet the standard and neither they nor the department can point you to anyone who will verify that an individual meets the</p>	
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	<p>standard. As a result, the Individual and the provider can never be sure if the individuals work product will actually be acceptable to the state, since there are no objective standards nor verification process, any one individual can retroactively be declared unqualified by the state and all of the work/billing they've been responsible for disallowed. This regulatory limbo provides a clear barrier to providers investing in the development of functional equivalents. Additionally, this factor coupled with the regulatory limbo for acceptable roles for the functional equivalent incentivizes underutilization of individuals who have developed the knowledge, skills and abilities on their own through decades of experience, limiting the utility of a potentially significant staff resource.</p> <p>Both individually and collectively these factors significantly hinder the interest in and development of this potentially valuable staff resource and makes the use of functional equivalents much less prevalent in the current service environment.</p> <p>Reduced utilization of functional equivalents has negative impacts on the employee class, service quality and business operations that fall disproportionately on small businesses.</p> <p>1. Individuals in the functional equivalency class of employees are treated unfairly. Remember here that we are talking about individuals who through decades of service, training and experience have empirically verified their ability to demonstrate and implement all of the knowledge, skills and abilities required of a QDDP in the provision of their services. However, the system devalues their contribution, creates barriers to professional growth and prohibits them from obtaining the recognition they duly deserve; seemingly dismissing all the hard work they endured to achieve the status and making it an apparent dead-end.</p> <p>2. Exacerbates the staffing crisis reducing overall service quality. Service quality is impacted in 2 ways 1st – the quality of the overall labor pool is reduced; by dis-incentivizing the use of</p>	
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	<p>functional equivalents these individuals are excluded from inclusion in the available supervisory labor pool up front and over the long-term quality employees will leave our services in search of employment that recognizes and rewards their empirical knowledge, skills and abilities (they have lots of options for this). Underutilization of functional equivalents also inflates the wages that have to be dedicated to supervisory staff, as a result of college graduates seeking/feeling entitled to a more significant wage, which directly draws from the overall allocation to wages in the organizational budget and results in lower wages for all DSPs making the direct service positions less attractive to quality individuals. 2nd – overreliance on college graduates reduces service quality –individuals with college degrees who we can hire at the currently low pay rates are seldom if ever superior to the individual with decades of experience and given the wages that we can pay these positions are frequently filled by new graduates or existing graduates who exhibit frequent job hopping, both of which introduce significant turnover in these vital roles undermining the familiarity, stability and continuity of services for individuals served. The use of new graduates is particularly problematic when they are put in charge of DSPs with years of experience, generating resentment among seasoned DSPs who believe that you can't lead the charge unless you've been in the trenches; resulting in decreased morale, supervisory dismissiveness and tensions, all of which impact negatively on service quality. Even more problematic is when the season DSP has to perform roles/functions for the individual with the new or existing college degree, because they simply lack the understanding that can only be gained from years of experience with the population and in providing the services and all of these concerns become significantly exacerbated; decreasing service quality.</p> <p>3. Business operations, particularly that of small businesses are significantly hampered by a labor shortage/crisis. At</p>	
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	<p>the simplest level, forcing reliance on college graduates significantly increases the labor cost for that position, which is a cost that will fall disproportionately on small businesses because they lack the economies of scale, double dipping and multiple career paths that are enjoyed by large bureaucratic businesses. Additionally, the inability to identify and hire qualified college graduates particularly in rural areas has become a significant constraint on our ability to maintain much less expand service provision in the Commonwealth. Reduction in the regulatory disincentives to the development of functional equivalent individuals to fill these vital roles would significantly increase the availability of qualified supervisory personnel who could help fill a significant labor shortage in our field. The refusal of the state to include cost-of-living adjustments and/or regularly scheduled rate refurbishments in the regulations, ensure that the labor crisis in our services will only get worse as inflation and more competitive wages elsewhere draw individuals away from our agencies and the state disincentivizing the development of this potential labor pool makes the crisis more acute; ignoring a potentially significant source of relief. Recommendation: recognize these individuals formally in the regulation by providing them a title (suggest QDDP functional equivalent), provide a regulatory mechanism which permits verification of their status by DBHDS and recognize regulatory rights for the individual who has achieved that status (i.e. qualifies to hold a license, preform all QDDP functions explicit or implicit for that service and establishes equivalency by regulation).</p>	<p>Comments related to chapters 107 and 108 will be taken into consideration as feedback for the overhaul action as these are new chapters pertaining to the licensing overhaul. In the short term, the Office of Licensing is working on updating guidance related to the provisions of 12VAC35-105–590 C 7.</p>
<p>“ “ “ “ 11/28/21 1:32 pm</p>	<p>Small business extinction - the department has been increasingly hostile to small businesses, this is not an opinion, it's not the way I "feel" it's a demonstrable fact for which there is ample evidence; consider: 1) the Burns rate setting analysisist stated during the question and answer session that the rate setting formula only permitted a profit for the business if they exercised "economies of scale" which is impossible</p>	

	<p>for very small businesses; 2) the current criteria for reimbursement used by the department to implement these rates also significantly disadvantage small businesses, in 2 independent ways: a) the incrementally increased penalties for group home size via the reimbursement rates disproportionately fell on single location small businesses and required expansion into multiple locations and a larger bureaucratic organization to avoid the penalties. b) The use of a "day" as the only billing unit allowed large bureaucratic organizations that offer day support services to double dip each day into the reimbursement pool for each individual in their care, an opportunity denied to small providers focused solely on providing residential services, unless they were to become larger and more bureaucratic to include day support services – Interestingly, when Covid closed day support programs large providers (who were double dippers) were quoted in the Richmond Times Dispatch lamenting that the day rate for residential supports alone was insufficient to cover the cost of the services; something very small providers said at the outset and have been battling since; 3) when making regulatory changes the department has repeatedly attempted to use pretext to disincentivize or prohibit successful business models for small providers (i.e. several efforts to eliminate the shared residence group home model, which so far have been unsuccessful and 4) regulations that have been adopted and proposed uniquely, disproportionately and unfairly have a significant negative impact on very small businesses. While several examples are included in other comments, multiple examples in response to every proposed regulation can be found in those comments and the most damning fact of all in this regard is that the department, to my knowledge, has never in their history adopted any proposed regulations including any exemption or accommodation for small businesses as is required by Virginia state law; Section 2.2 – 4007.1 provides clear requirements “to minimize the economic impact on small businesses”,</p>	
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	<p>“consider utilizing alternative regulatory methods” for small businesses (listing 5), avoid regulations that “overlaps, duplicates... federal or state law or regulation” and “minimizing the adverse impact on small businesses”.</p> <p>RECOMMENDATIONS: 1) the regulation should clarify that if an organization is split into 2 or more entities, then the parent organization which holds a full license in good standing can retain that license and need not move to a conditional license; 2) the regulation should include an exemption that allows a small business to change ownership as an intact entity to retain its value and avoid extinction</p> <p>12 VAC 35- 105-50; 12 VAC 35 – 106 – 40; 12 VAC 35 – 106 – 50; 12 VAC 35 – 106 – 80 – taken collectively, these provisions cemented into stone the following conditions:</p> <p>1) A conditional license is the only one that will be issued whenever a person who does not hold a current license, a change of ownership and/or a desire to transfer and a current license holder who subsumes the operations from another license holder.</p> <p>2) conditional license holders are limited to one group home with 4 or fewer persons during the conditional license period; while there is no mention of sponsored placement homes but it appears, the same logic would be operational there as well.</p> <p>3) The one exception to the conditional license limits, are also limited as 106 – 50 A1f – states "once a provider holds a full organizational license, the provider may have more than one additional service on a conditional license". However, this does not appear to include more than one group home location and this would limit the choices for intact moves in succession/change of ownership to those entities which already held a full organizational license.</p> <p>The inevitable result of these 3 conditions would ensure the extinction of small businesses as it precludes any choices that would allow the small business to continue intact, economically</p>	
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	<p>viable and under the same name. Consider the choices available: 1. the small business goes to an entity that currently holds a organizational license – if the small business had more than one group home location or one that served more than 4 individuals that it does not appear even that entity could subsume the small business intact and even if it could that's exactly what would happen – it would be subsumed, the name disappear and the small business would die, while the parent organization would grow into an even larger more bureaucratic entity. Or 2) the small business goes to new license holders – again if the business had more than one group home location, one that served more than 4 persons or offered more than one service, the small business would have to be broken up into several component parts so that each of the new license holders could hold a small enough piece to qualify with their conditional license, which would require several business names, lose the economy of scale necessary for profitability and again the small business would die.</p> <p>Either of these choices and/or a combination of the 2 would have the exact same outcome the small business would cease to exist as a separate entity and large bureaucratic businesses would continue to feast on their remains and grow even larger, more bureaucratic and further removed from the Individuals served.</p> <p>Consider the circumstance of our very small business, regulatory burdens and reimbursement penalties forced us to reduce from 2 group homes (with plans for a 3rd where the property was purchased, the blueprints drawn up and initial contractors secured) down to only one 4 person group home and 1 sponsored residential home; but even for a business that small these rules would make it impossible to transfer the business intact and keep its name. While not perfect, over the past 19 and a half years, it has consistently demonstrated</p>	
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	<p>substantial compliance with the regulations (1 founded human rights violation – confidentiality breach in 2009 without harm; only 4 licensing citations with CAPs – 3 for med error without harm/ER or physician visit and one for the designated smoking area when licensing agents/ interpretation changed) and when these concerns did appear the corrective action that was eventually accepted had already been completed prior to the citation and in the others, the propose corrective action was completed before it was accepted/approved. In addition to substantial compliance with the state regulations, the organization has never received a violation nor recommendation of change from a DMAS review, 2 rounds of HSAG/PDQR reviews and has been the deemed as in compliance with the final rule HCBS rights requirements. This clearly establishes that the policies and procedures, practices, administration supervision and services/protections of the organization are sufficient to justify continued full licensing of the organization. We had a succession plan in the event of the owner/license holder death, that provided for the House Manager, who has been with the organization since inception and one of 2 administrators/supervisors, thus qualified and an integral part of the organization compliance, to take over and all of the corporations stocks, assets and accounts were set to transfer to her in the will. Under this regulatory set that will not be able to be possible, she will be cheated out of all that she has work for to build the organization, the individuals served (2 of them for over 18 years) will lose their home and a successful small business with a good reputation will simply die. This should not be an acceptable result, the problem is further magnified for businesses that are slightly larger than ours, but as this example indicates even very small businesses will be on the chopping block and their extinction assured.</p> <p>RECOMMENDATION: change these provisions to prevent this injustice and the extinction of small businesses, through either an expanded clarification</p>	<p>Thank you for your comments. DBHDS values providers of high quality services of all sizes across the service spectrum.</p>
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	<p>of succession that allows for the transfer of the business intact to an involved individual who qualifies or create a small business exemption which accomplishes the same function</p>	
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Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation is necessary to carry out the licensure requirements of Title 37.2 of the Code of Virginia, and meets the requirements of EO14 in that the regulation helps to protect the health, safety, and welfare of individuals needing licensed services as it articulates specific standards for licensing of organizations and facilities that provide behavioral health and developmental disability services. The structure of the regulation is straightforward.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

Related to this periodic review, an overhaul of these regulations has been underway since the last periodic review. Three of six planned draft chapters (one general chapter and five service-specific chapters) were published for public comment in May 2021 and can be viewed here: <https://www.townhall.virginia.gov/L/GeneralNotice.cfm?BoardID=65&DateSelection=Expired>.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

- (1) The regulation is needed to carry out the licensure requirements in Title 37.2 of the Code of Virginia.
- (2) The nature of complaints or comments received concerning the regulation during the periodic review related to one specific situation and termination and discharge criteria set by providers.
- (3) The complexity of the regulation is straightforward. It articulates specific standards for licensing of organizations and facilities that provide behavioral health and developmental disability services. Because it is intended to establish structures for the health, safety, and welfare of some of Virginia's most vulnerable citizens, some parts of the regulation is more detailed by necessity to help ensure the safety standards.

(4) There are parts of the regulation that are closely associated with regulations from the Department of Health Professions Board of Counseling, the Department of Health, and the Department of Medical Assistance Services, but the regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

(5) The regulation was evaluated four years ago and an overhaul of the regulation has been underway since that time. Technology, economic conditions, or other factors changed during the pandemic. While the department anticipates some of these factors will someday return to their pre-pandemic status, there is also an understanding that some systemic changes resulting from COVID may be more permanent. The overhaul of the Licensing Regulations will address any permanent changes.

The agency's decision to amend the chapter may minimize the economic impact of regulations on small businesses by clarifying expectations for providers. The agency's decision to amend the chapter may also cause an economic impact on small businesses as a goal of the overhaul is to raise the bar of licensing.
